

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 05-0160

**Use Tax
For Tax Year 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Aircraft Rental—Use Tax

Authority: IC 6-2.5-5-8; IC 6-8.1-5-1; 45 IAC 2.2-4-8

Taxpayer protests imposition of use tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft and did not pay sales tax on the purchase price. Taxpayer claimed an exemption for rental or leasing. Upon review, the Indiana Department of Revenue ("Department") determined that taxpayer did not qualify for the claimed exemption and issued a proposed assessment use tax, penalty and interest. Taxpayer protests the imposition of tax. Further facts will be supplied as necessary.

I. Aircraft Rental—Use Tax

DISCUSSION

Taxpayer purchased an aircraft and claimed an exemption from sales tax on the purchase of the aircraft. Both taxpayer and the lessee corporation are owned by the same individual. The exemption at issue is found in IC 6-2.5-5-8, which states in relevant part:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

Taxpayer states that it purchased the aircraft for rental or lease to another corporation, and that this qualifies it for the exemption in IC 6-2.5-5-8.

The Department reviewed the claim for the exemption and determined that taxpayer did not qualify for the exemption. The Department reviewed taxpayer's 2002 payment of sales tax from its leasing activities and noted that an extremely high percentage of reported sales were listed as exempt sales. The Department considered this as evidence that taxpayer was not accurately collecting sales tax on its aircraft leasing activities. The Department then decided that, since taxpayer was not collecting sales tax on its aircraft leasing, it was not actually leasing the aircraft and so did not qualify for the exemption found in IC 6-2.5-5-8.

In the course of its protest, taxpayer provided documentation establishing that it was involved in several leasing activities, including rental of accommodations for more than thirty (30) days, which is an exempt activity under 45 IAC 2.2-4-8(b), which states:

In general, the gross receipts from renting or furnishing accommodations are taxable. An accommodation which is rented for more than thirty (30) days or more is not subject to the gross retail tax.

The documentation establishes that an extremely large percentage of taxpayer's rental sales were eligible for the exemption found in 45 IAC 2.2-4-8(b). This accounts for taxpayer's aircraft rental sales.

This new information clarifies taxpayer's activities and establishes that taxpayer did not claim the exempt sales to apply to its rental of the aircraft in question. Since taxpayer collected and remitted sales tax on the rental of the aircraft, it did rent the aircraft in the ordinary course of its business. Pursuant to IC 6-8.1-5-1(b), taxpayer has provided sufficient documentation to meet its burden of proving that the proposed assessment is wrong. Taxpayer qualified for the exemption found in IC 6-2.5-5-8.

FINDING

Taxpayer's protest is sustained.